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Supreme Court of the United States

October Term, 1962

No. 16

BANCO NACIONAL DE CUBA,

Petitioner,

against

PETER L. F. SABBATINO, as Receiver, and F. SHELTON PARR, WILLIAM F. PRESCOTT, EMMET WHITLOCK, LAWRENCE H. DIXON, H. BARTOW FARR, ELIZABETH C. PRESCOTT, FABIO FREYRE and HELEN G. DOWNS, co-partners doing business as FARR, WHITLOCK & CO.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONSE BY PETITIONER TO MEMORANDUM SUBMITTED BY THE UNITED STATES

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Attorneys for Petitioner.

Supreme Court of the United States

October Term, 1962

No. 403

BANCO NACIONAL DE CUBA,

Petitioner,

against

PETER L. F. SABBATINO, as Receiver, and F. SHELTON FARR, WILLIAM F. PRESCOTT, EMMET WHITLOCK, LAWRENCE H. DIXON, H. BARTOW FARR, ELIZABETH C. PRESCOTT, FABIO FREYRE and HELEN G. DOWNS, co-partners doing business as FARR, WHITLOCK & CO.

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RESPONSE BY PETITIONER TO MEMORANDUM SUBMITTED BY THE UNITED STATES

At pages 19 to 22 of its petition, petitioner discussed the serious problem of due process raised by the reliance of the Court of Appeals on correspondence, not in the record, fragments of which had been submitted to the court in a brief *amici*, long after the decision of the District Court: The memorandum submitted by the Solicitor General, setting forth much of this correspondence in full, serves to reinforce the argument made in our petition.

As a result of the improper submission by the *amici curiae* of material outside the record, the Court of Appeals was led to misinterpret the position taken by the Executive branch of the Government. In view of the decision of the Court below, which is grounded on the supposed view of the Executive, even if there were nothing else in this case, review by this Court would be required.

However, we do not wish this issue to obscure the principal legal problems raised by the record with respect to which the Solicitor General agrees a writ of certiorari ought to be granted. These questions are recurring and fundamental, and the extensive litigation now pending in many courts of the United States involving either directly or indirectly the Cuban nationalization decrees cannot be satisfactorily decided or even considered until this Court has spoken. The present case, while perhaps not decisive of all of the issues in these cases, will have a significant bearing on them.

Respectfully submitted,

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January 9, 1963.